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Okocha v. Amazon.com

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-4125

BASIL E. OKOCHA;
BASIL PUBLISHING COMPANY

v.

AMAZON.COM

Basil E. Okocha,
Appellant

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 04-cv-02115)
District Judge: Honorable Faith S. Hochberg

Submitted Under Third Circuit LAR 34.1(a)
June 21, 2005

Before: ROTH, MCKEE AND ALDISERT, CIRCUIT JUDGES

(Filed: November 3, 2005)

OPINION

PER CURIAM

Appellant Basil E. Okocha appeals from an order of the United States District Court for the District of New Jersey granting summary judgment in favor of Amazon.com. We will affirm.

The procedural history of this case need not be discussed at length as it is well-known to the parties and set forth in the District Court's opinion. In 1993 Okocha wrote and published a book in Nigeria entitled The Old Man Who Refused to Die. In 2001 Okocha moved to the United States. In 2002 Okocha decided to self-publish his book in the United States through his publishing business, Basil Publishing Company. Okocha planned to publish the book in 2006. In conjunction with his publishing company, Okocha created two websites using his name as a key word for internet search engines. Okocha subsequently visited a search engine and submitted his name as a search term. The search returned a link to the title of his book on Amazon.com. By clicking on the link, Okocha discovered that copies of his book were listed for sale by several third-party sellers on the Amazon.com website. However, there were no listings for the sale of Okocha's book by Amazon.com itself.

In May 2003, Okocha filed a complaint against Amazon.com in the United States District Court for the District of New Jersey alleging, inter alia, copyright infringement, conspiracy, fraud, negligent/intentional infliction of emotional harm, and loss of future wages. Amazon.com filed a motion to dismiss for failure to state a claim, which the

District Court converted into a motion for summary judgment. Okocha then filed a motion for summary judgment. By order entered October 13, 2004, the District Court granted summary judgment in favor of Amazon.com. Okocha appeals.

After careful review of the record and consideration of the arguments on appeal, we agree with the District Court that Amazon.com was entitled to judgment as a matter of law. With regard to the copyright claim, Okocha failed to show that he owned a valid United States or foreign copyright for The Old Man Who Refused to Die, or that Amazon.com copied the material. See Masquerade Novelty, Inc., v. Unique Indus., Inc., 912 F.2d 663, 667 (3d Cir. 1990) (setting forth the elements of a copyright infringement claim). Even assuming that Okocha owned a valid copyright,¹ Amazon.com did not interfere with Okocha's exclusive right to distribute his book because reselling a copy of a previously purchased book does not infringe upon the right of distribution. See 17 U.S.C. § 109.

The internet printouts submitted by Okocha to prove that Amazon.com listed several copies of his book for sale also clearly indicate that the books listed for sale were published in 1993, the year the book was originally published in Nigeria. The fact that the books listed for sale were published in 1993 indicates that they were not published at a later date and redistributed internationally by Amazon.com as Okocha asserts. The

¹ On appeal, Okocha submitted documents purporting to prove that he owned a valid foreign copyright for The Old Man Who Refused to Die. We will not review the documents because they were submitted for the first time on appeal.

evidence instead established that the independent third-party sellers were selling used copies of Okocha's 1993 book. Summary judgment thus was properly granted in favor of Amazon.com with respect to the copyright claim.

Amazon.com was likewise entitled to judgment as a matter of law with respect to Okocha's conspiracy claim. A conspiracy involves an intent to achieve a common improper goal and an agreement to work together toward that improper goal. See, e.g., United States v. Pressler, 256 F.3d 144, 149 (3d Cir. 2001). Okocha failed to provide admissible evidence to show that Amazon.com and the third-party sellers conspired to violate his copyrights. As for Okocha's remaining claims alleging, inter alia, fraud, negligent/intentional infliction of emotional harm, and loss of future wages, we have thoroughly reviewed the record and conclude that Amazon.com was entitled to judgment as a matter of law. _

Accordingly, we will affirm the order of the District Court. Okocha's motion to expedite is denied. His motion to file supplementary proof and a supplemental appendix is granted.